REME COURT, U. S.

Supreme Court, U.S.
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in the

Supreme Court

of the

United States

October Term, 1970

No. 566

JAMES S. MORISON,

Petitioner,

vs.

GENERAL MOTORS CORPORATION,
a Delaware corporation,

Respondent.

BRIEF OF RESPONDENT GENERAL MOTORS CORPORATION IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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MIAMI REVIEW — 371-4853 — 377-3721

INDEX

	Page
OPINIONS BELOW	1-2
JURISDICTION	2
QUESTION PRESENTED	2-3
STATUTES INVOLVED	3
STATEMENT OF THE CASE	3-5
REASONS FOR DENYING WRIT	5-7
CONCLUSION	8
CERTIFICATE OF SERVICE	9
APPENDIX A	
Summary Final Judgment	App. 1-2

INDEX OF CASES CITED

	Page
ALLBRIGHT BROS. CONTRACTORS v. HULL-DOBBS CO., (6th Cir. 1953, 209 F.2d 103	7
HASSELRODE v. GNAGEY, 404 Pa. 549, 172 A.2d 764 (1961)	5
HODGES v. UNITED STATES FIDELITY & GUARANTY COMPANY, (Mun.Ct.App.D.C. 1952), 91 A.2d 473, 34 A.L.R.2d 1101	5
PACLAWSKI v. BRISTOL LABORATORIES, INC. (Okla. 1967), 425 P.2d 452	7
PEMROCK, INC. v. ESSCO., INC., (Md. 1969), 249 A.2d 711	5
PETERS v. BUTLER, (Md. 1969), 251 A.2d 600	5
SMITH v. TIPPS ENGINEERING & SUPPLY COMPANY, (Ark. 1960), 333 S.W.2d 483	7

OTHER AUTHORITIES CITED

28 U.S.C. § 1254(1)	2
Laws of Arkansas, 1947, §§ 34.1001-34.1009	3

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Petitioner prays that a writ of certiorari issue to review the judgment below of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Summary Final Judgment of the United States District Court for the Southern District of Florida is unreported but is reproduced as Appendix A to this

brief. Petitioner appealed the Summary Final Judgment to the United States Court of Appeals for the Fifth Circuit. The Court of Appeals affirmed in an opinion rendered June 11, 1970. This opinion is not yet reported but appears as Appendix A to the Petition.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The opinion of the Court of Appeals is dated June 11, 1970. No petition for rehearing was filed below. The petition for a writ of certiorari was timely filed in this Court on August 20, 1970.

QUESTION PRESENTED

Petitioner, an automobile passenger, sustained serious personal injuries in an Arkansas accident when the driver of the car in which he was riding ran into the abutment of a bridge. The driver's insurer negotiated a settlement with petitioner for $10,000.00, and obtained a release naming as the parties released, the driver, another individual, and:

> ". . . their heirs, executors and administrators, agents and assigns **and all other persons, firms or corporations liable or who might be claimed to be liable** . . . for any and all claims, demands, damages, actions, causes of action, or suits of any kind or nature whatsoever, and particularly on account of all injuries, known and unknown, both to person and property, which have resulted or may in the future develop from an accident which occurred . . ."

Thereafter, petitioner sued respondent in the United States District Court for the Southern District of Florida contending respondent had improperly manufactured and designed the automobile and was liable to him for the injuries sustained in the Arkansas accident. The district court entered summary judgment for respondent. Petitioner then appealed to the Court of Appeals which affirmed on the ground that, under the applicable Arkansas law, the release was a bar to the action.

The only question presented by the petition for a writ of certiorari is whether the Court of Appeals erred in holding that, under Arkansas law, the release was a bar to the action.

STATUTES INVOLVED

The Uniform Contribution Among Tortfeasors Act was enacted in Arkansas in 1941 and now appears as Sections 34.1001-34.1009, Laws of Arkansas, 1947. These Sections are quoted in full in Appendix B to the petition.

STATEMENT OF THE CASE

Petitioner was riding as a passenger in a car manufactured by respondent when Wilma Roach, the driver, ran into a bridge abutment. The driver's insurer negotiated a settlement with petitioner for $10,000.00. Petitioner was represented by counsel at the time and executed a general release which specifically named as parties released, Wilma Roach, another individual, and;

> ". . . their heirs, executors and administrators, agents and assigns and all other persons, firms or corporations liable or who might be claimed to be liable . . . for any and all claims, demands, damages, actions, causes of action, or suits of any kind or nature whatsoever, and particularly on account of all injuries, known and unknown, both to person and property, which have resulted or may in the future develop from an accident which occurred . . ."
>
> The release also contained a provision stating:
>
> "Undersigned hereby declares that the terms of this settlement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise adjustment and settlement of any and all claims, disputed and otherwise, on account of the injuries and damages above mentioned, and for the express purpose of precluding forever any further or additional claims arising out of the aforesaid accident."

After execution of the release, petitioner sued respondent in the United States District Court for the Southern District of Florida, claiming that respondent was liable to him for having improperly designed and manufactured the accident automobile. Respondent pleaded the release as a defense and then moved for summary judgment. In response to the motion, petitioner filed his own affidavit and that of his "settling" counsel that they did not intend to release respondent, had no settlement negotiations with respondent, and that none of the $10,000.00 paid for the release was paid by respondent.

The district court entered summary judgment for respondent which was affirmed by the Court of Appeals, on the ground that the release was a bar to the action under the applicable Arkansas law. All of the foregoing facts are stated in the opinion of the Court of Appeals below.

REASONS FOR DENYING THE WRIT

1. The petition presents no federal question. The only issue raised is whether the Court of Appeals correctly decided the cause under the admittedly applicable Arkansas law.

2. The decision below is correct. Every appellate court which has passed on the effect of an "all persons, firms and corporations" release under the Uniform Contribution Among Tortfeasors Act has held in accord with the decision below. HASSELRODE v. GNAGEY, 404 Pa. 549, 172 A.2d 764 (1961); HODGES v. UNITED STATES FIDELITY & GUARANTY COMPANY, (Mun. Ct.App. D.C. 1952), 91 A.2d 473, 34 A.L.R.2d 1101; PEMROCK, INC. v. ESSCO CO., INC., (Md. 1969), 249 A.2d 711; PETERS v. BUTLER, (Md. 1969), 251 A.2d 600.

A major purpose of the Uniform Act would be destroyed if the instant release were held not to bar the present action. As stated by the Court of Appeals below:

> "... the policy reasons that support the holdings of the courts which have construed the language to release all tortfeasors are clear when we consider additional provisions of the Uniform Act.

> Thus, it is clear that Wilma Roach and or her insuror would lose substantial rights unless they obtained a complete release of all tortfeasors. They would give up their right to seek contribution from General Motors, for instance; and they would leave themselves open to an action for contribution to a judgment obtained by the Plaintiff against another tortfeaser. Thus, it may be assumed that the settlement would never have been made here unless the release of all joint tortfeasors was included." [Emphasis the Court's.]

In addition, as the Court of Appeals points out in the concluding paragraphs of its opinion:

> "Moreover, an additional paragraph of the Arkansas statute is significant. It says:
>
> > 'This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of these states that enact it.' Acts 1941, No. 315 §9 p. 788. See 34-1008, Laws of Arkansas.
>
> As we read the cases of the states where the Act has been construed by the courts we conclude that we have carried out the mandate of Sect. 1008 by holding that this release satisfied the terms of the Act that provided for a release of all joint tortfeasors."

3. The cases cited by petitioner as holding that under Arkansas law the instant release is not a bar are clearly distinguishable. SMITH v. TIPPS-ENGINEERING & SUPPLY COMPANY (Ark. 1960), 333 S.W.2d 483, does not involve a release. The case merely holds that the recovery of a judgment against one tort-feasor does not discharge the liability of other tort-feasors.

ALLBRIGHT BROS. CONTRACTORS v. HULL-DOBBS CO. (6th Cir. 1953), 209 F.2d 103, is likewise not in point because the release there involved only released the named parties and did not purport to release "all persons, firms, and corporations" which might have been liable to the injured party. Cf., PACLAWSKI v. BRISTOL LABORATORIES, INC. (Okla. 1967), 425 P.2d 452, which points up the importance of the distinction under Arkansas release law.

The opinion below is correct in stating that there is no decision in point arising under Arkansas law.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that in accordance with Supreme Court Rule 33, three copies of the foregoing were mailed to the attorneys for petitioner, AL J. CONE and LARRY KLEIN of CONE, WAGNER, NUGENT, JOHNSON, McKEOWN & DELL, P. O. Box 3411, West Palm Beach, Florida 33402, this ____ day of September, 1970.

_____

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF
FLORIDA, MIAMI DIVISION

CASE NO. 68-590-Civ-EC

JAMES S. MORISON,

Plaintiff,

v.

GENERAL MOTORS CORPORATION,
a Delaware corporation,

Defendant.

SUMMARY FINAL JUDGMENT

THIS CAUSE came on to be heard on Defendant's Amended Motion for Summary Judgment. After hearing argument of counsel, considering the briefs of the parties and being otherwise duly advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Defendant's Amended Motion for Summary Judgment should be and the same is hereby granted.

2. Summary Final Judgment should be and the same is hereby entered for the Defendant, GENERAL MOTORS CORPORATION, and against the Plaintiff, JAMES S. MORISON, and the Defendant shall go hence without day.

3. Defendant shall have and recover its lawful costs, if any, herein expended on motion duly filed in accordance with the applicable law.

DONE AND ORDERED at Miami, Dade County, Florida, this 18th day of August, 1969.

/s/ Emett C. Choate
SENIOR U. S. DISTRICT JUDGE